

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL
WRIT PETITION No. 610 (M/S) of 2003
(Civil Misc. Application No. 3480 of 2006)

Kallu Begh S/o Late Maula Begh
R/o Ganges View Cottage, Landour Cantt.
Mussoorie, District Dehradun

.....Petitioner

Versus

1. Rent Control & Evection Officer, Court Compound, Mussoorie,
District Dehradun.
2. Smt. Shreeing Chodaein W/o Shri Taen Singh
R/o Spring View, Tehri Road, Mussoorie
District Dehradun.

.....Respondents

05.04.2006

Sri A. Rab, Learned counsel for the petitioner.

Sri Rajendra Dobhal & Sri D.C.S. Rawat, Learned Counsel for the respondents.

Hon'ble Rajesh Tandon, J.

Heard Sri A. Rab, Learned Counsel for the petitioner and Sri Rajendra Dobhal, Learned Counsel for the respondents.

By the present writ petition, the petitioner has prayed for quashing the order dated 05.6.2003 passed by the respondent no.1 regarding declaring the vacancy of the premises and directing the respondents not to dispossess the petitioner from the property in dispute.

Briefly stated according to the case of the petitioner, petitioner was initially inducted as tenant in the premises known as Ganges View, Landour Cantt. Mussoorie by Shri P.C. Jain since 05.07.1976.

Proceedings for vacancy having been started, the Rent Control and Eviction Officer passed the order on 05.06.2003 in case No. 14 of 2000 declaring the premises as vacant.

Counsel for the respondent No.2 has filed a Counter Affidavit stating therein that the petitioner is unauthorized occupant having been inducted after 05th July, 1976 without any allotment order

and as such the premises is liable to be declared vacant under section 12 of U.P. Act No. 13 of 1972.

Petitioner has challenged the order of vacancy by way of the present writ petition.

In ***Achal Mishra Vs. Ram Shankar Singh in 2005 (1) ARC page 887***, it has been held as under :--

*"It is thus clear that an order notifying a vacancy which leads to the final order of allotment can be challenged in a proceeding taken to challenge the final order, as being an order which is preliminary step in the process of decision making and in passing the final order. Hence, in a revision against the final order of allotment which is provided for by the Act, the order notifying the vacancy could be challenged. The decision in Ganpath Roy's case which has disapproved the ratio of the decision in M/s Trilok Singh and Co., cannot be understood as laying down that the failure to challenge the order notifying the vacancy then and there, would result in the loss of right to the aggrieved person of challenging the notifying of vacancy itself, in a revision against the final order of allotment. It has only clarified that even the order notifying the vacancy could be immediately and independently challenged. The High Court, in our view, has misunderstood the effect of the decision of this court in Ganpat Roy's case and has not kept in mind the general principles of law governing such a question as expounded by the Privy Council and by this Court. It is nobody's case that there is anything in the Act corresponding either to Section 97 or to Section 105(2) of the Code of Civil Procedure, 1908 precluding a challenge in respect of an order which ultimately leads to the final order. We overrule the view taken by the Allahabad High court in the present case in **Smt. Kunj Lata vs. Xth Additional District Judge, Kanpur Nagar and others (supra)** that in a revision against the final order, the order notifying the vacancy could not be challenged and that the failure to independently challenge the order notifying the vacancy would preclude a successful challenge to the allotment order itself. In*

fact, the person aggrieved by the order notifying the vacancy can be said to have two options available. Either to challenge the order notifying the vacancy then and there by way of a writ petition or to make the statutory challenge after a final order of allotment has been made and if he is aggrieved even thereafter, to approach the High Court. It would really be a case of election of remedies.”

In view of the above, liberty is given to the petitioner to challenge the order of vacancy when the final order is passed under Section 12 of the U.P. Act No. 13 of 1972.

Consequently, writ petition is disposed of at this stage. No order as to costs.

(Rajesh Tandon, J.)

05.04.2006

Jain